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Applicant(s): Oleg Y. Gusikhin et al.

Serial No: 10/023,075


Group Art Unit: 5535

Filed: 12/13/2001

Examiner: C. Chow

Title: VRML Interface Software For Image And Data Compilation

Docket No.: 199-0072 (VGT 0284 PA)

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))	
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Date: <u>8-16-05</u>	 Signature <u>Chris Merkel</u>

**PETITION TO WITHDRAW "FINAL" STATUS
OF PREMATURELY FINAL REJECTION
(MPEP § 706.07(a))**Assistant Commissioner for Patents
Washington, D.C. 20231

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(10/023.075)

Examiner Chow:

Your petitioner respectfully requests that the "final" status of the second rejection in this application (Serial No. 10/023,075) mailed June 16, 2005 be withdrawn. According to MPEP § 706.07(a), this rejection was not properly made final.

In the first Office Action mailed October 14, 2004, claims 1-4, 23, and 24 were rejected under 35 U.S.C. § 102(b), based on "Smart Virtual Prototypes: Distributed 3D Product Simulators for Web Based Environments", Proceedings of the Fifth Symposium in Virtual Reality Modeling Language, February, 2000; by Marco Salmela, Harry Kyllönen (herein after "Salmela"). The rejection under 35 U.S.C. § 102(b) was traversed, as the cited reference lacked a reference designator, XY location, rotation information, and package type. The reference further lacked that the VRML interface software program compiles visual information from the reference designator, the XY location, the rotation information, and the package type and the VRML viewer plug-in.

In the second Office Action, claims 1-4, 23, and 24 were rejected under 35 U.S.C. § 102(b), based on the newly-applied Van Huben et al. reference, and the action was made final. This is contrary to MPEP § 706.07(a), which states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

(Emphasis added.) The rejection based on the Salmela reference was deficient respecting the original claim, the applicants pointed out the deficiency, and the rejection was withdrawn. Further, no Information Disclosure Statement has been filed, and therefore, the new reference could not have been disclosed therein.

MPEP § 706.07(a) continues that:

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A second or any subsequent actions on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed.

(Emphasis added.) The amendments to claims 1-4, 23, and 24 were made through canceling claims 17-19 and incorporating the cancelled claims into original claims 1 and 23. Claims 17-19 stood rejected under 35 U.S.C. § 103(a) as being unpatentable over Salmela in view of U.S. Patent No. 6,665,854 by Fujiwara et al. (hereinafter "Fujiwara"), and further in view of U.S. Patent No. 6,362,817 by Albert R. Powers (hereinafter "Powers") and also stood rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The applicant traversed both the 35 U.S.C. § 103(a) and 35 U.S.C. 112 rejections of the material in claims 17-19 as incorporated into claims 1 and 23.

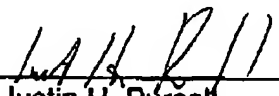
Claims 1 and 23 clearly include limitations, which should reasonably have been expected to be claimed. That is, they include the elements of cancelled claims 17-19 as amended to overcome 35 U.S.C. 112, second paragraph rejections. Claims previously in the application include elements likely to be claimed, and elements overcoming 35 U.S.C. 112, second paragraph rejections are also likely to be claimed (See discussion of 35 U.S.C. 112 rejection in MPEP § 706.07(a).)

The Office is therefore respectfully requested to treat the Office Action mailed June 16, 2005 as a second, non-final rejection.

Should the Examiner have any further questions or comments please contact the undersigned. Please charge any fees required in the filing of this amendment to deposit account 50-0476.

Respectfully submitted,

By: _____


Justin H. Purcell
Reg. No. 53,493
28333 Telegraph Road
Suite 250
Southfield, MI 48034
(248) 223-9500

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